

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

THE FLAG COMPANY, INC.,

Plaintiff

v.

STEVEN A. CHAN, LLC (d/b/a FIVE
STAR FLAGS and/or VIA5) and
STEVEN A. CHAN,

Defendants.

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CIVIL ACTION FILE NO.
1:09-cv-01880-CAP

**MOTION FOR LEAVE TO FILE A CERTIFIED COPY OF
THE FILE WRAPPER FOR THE FARMING FLAGS MARK**

In his response to the Motion for Summary Judgment filed by Plaintiff The Flag Company, Inc. (“Plaintiff”), Defendant Steven A. Chan (“Chan”) objected to the authenticity of the records from the United States Patent and Trademark Office that were attached to the Declaration of Vicki Lawrence.

Plaintiff maintains that these records were properly authenticated pursuant to Fed. R. Evid. 901(b)(1), which provides that a witness may authenticate a document by testifying that it is “what it is claimed to be.” In any event, however, Plaintiff has obtained a certified copy of the file wrapper for the FARMING FLAGS mark. To the extent that there was any real concern about the accuracy of

the statements in paragraphs 7-9 of the Lawrence Declaration, or trustworthiness of the documents attached as Exhibits A-C thereto, the certified copy of the file wrapper eliminates any such concern.

Plaintiff offers the certified copy of the file wrapper solely in response to Chan's concerns regarding the legitimacy of the evidence submitted in support of Plaintiff Motion for Summary Judgment, not as a means to supplement the record with new evidence.¹

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the certified copy of the file wrapper for the FARMING FLAGS mark, which is attached hereto as Exhibit A.

[Signature of counsel appears on the following page.]

¹ As part of his reply brief in support of his evidentiary objections [Docket No. 90], Chan asserts that the file wrapper and what Chan refers to as the "new and improved" Lawrence Declaration [Docket No. 89-1] should be stricken as impermissible supplemental evidence. However, as stated herein, the file wrapper is not new evidence and is presented merely to conclusively establish the authenticity of previously submitted evidence. Furthermore, the original Lawrence Declaration [Docket No. 47-8] is not defective, and the only change in the "new and improved" Lawrence Declaration relates to the attestation clause. Plaintiff has submitted these materials in an abundance of caution and in response to Chan's specific evidentiary objections, not to bolster the record with new facts of which Chan has not been previously informed. Accordingly, to the extent that Chan's "Evidence Objections to Plaintiff's Supplemental Materials" constitutes yet another motion, Plaintiff respectfully requests that it be denied.

Dated this 22nd day of November, 2010.

Respectfully submitted,

ARNALL GOLDEN GREGORY, LLP

/s/ J. Tucker Barr

Scott E. Taylor
Georgia Bar No. 785596
J. Tucker Barr
Georgia Bar No. 140868

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LOCAL RULE 7.1D CERTIFICATION

I hereby certify that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1C, namely, Times New Roman, 14 point.

/s/ J. Tucker Barr

J. Tucker Barr
Georgia Bar No. 140868

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing MOTION FOR LEAVE TO FILE A CERTIFIED COPY OF THE FILE WRAPPER FOR THE FARMING FLAGS MARK with the Clerk of Court using the CM/ECF system, and further certify that on November 22, 2010, I served Defendants with same by placing a copy in the United States mail, first class, addressed to:

Steven A. Chan, LLC
Attn: Steven A. Chan, Registered Agent
720A Center Street
Costa Mesa, California 92627

Steven A. Chan
720A Center Street
Costa Mesa, California 92627

Dated this 22nd day of November, 2010.

/s/ J. Tucker Barr

J. Tucker Barr
Georgia Bar No. 140868